In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 1594

THOMAS KEE MING HSU, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Southern District of New York, petitioner was convicted on eleven counts charging him with fraud, causing the interstate travel of a victim in execution of a fraudulent scheme, and causing the interstate transportation of fraudulently obtained money, in violation of 18 U.S.C. 1343 and 2314. He was sentenced to eight years' imprisonment. The court of appeals affirmed (Pet. 1a-9a).

Petitioner contends that a search of his apartment in 1965, incident to his arrest there and pursuant to a bench warrant, violated the pinciples of *Chimel* v. *California*, 395 U.S. 752, and that the trial judge erred in refusing to reveal the contents of a pre-sentence report. In urging that the petition for a writ of certiorari should be denied, we rely upon the opinion of the court below. As the opinion points out, the search was not unreasonable under *Chimel*, even assuming that decision to have retroactive application. There is, therefore, no occasion to delay disposition of this petition pending decision next Term in the two cases now before this Court which raise the issue of retroactivity of *Chimel*.[1]

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

JUNE 1970.

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[1] *Williams* v. *United States*, certiorari granted, 397 U.S. 986; *Elkanich* v. *United States*, certiorari granted, 396 U.S. 1057.

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